

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 86 OF 2020
(Originating from Application No. 186/2014 of Bukoba DLHT)

GRACE MARCEL.....APPELLANT
*(Administrative of the Estate of the late
Marcel Mutakyawa Kanyambo)*

VERSUS

RESPICIUS EMMANUEL.....RESPONDENT


JUDGMENT

11th May & 27th May 2022

Kilekamajenga, J.

The appellant appeared before this court challenging the decision of the District Land and Housing Tribunal for Kagera at Bukoba. The appellant moved this Honourable Court by way of an appeal which contained three grounds that:

- 1. That, the learned Chairman misdirected himself by dismissing the suit on the ground of the non-production of the sale agreement by the prosecution side while there was the satisfactory testimony to prove the ownership rights apart from the adduced evidence of the fate of the same document.*
- 2. That, when delivering the judgment the trial tribunal failed to take into the consideration of the balance of probabilities on the contended subject matter.*
- 3. That, the lower tribunal had rushed to hold its judgment without considering the weight of the adduced evidence made by the prosecution case.*



Before this Court, the parties were ordered to dispose of the appeal by way of written submissions. The appellant who was represented by the learned advocate, Mr. Lameck John Erasto submitted that, during the trial, the issues were drawn on 23rd July 2015, but on that date, both the appellant and respondent were absent. Even the counsels for the parties were absent on that date. Furthermore, the contents of the application were not read to the parties something which is contrary to **Rule 12 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 GN No. 174 of 2003.**

The counsel for the appellant further submitted that, it is not clear when the tenure of assessors expired. He also submitted that, the trial chairman erred in determining the case based on non-production of the sale agreement entered between the appellant's father and Damian Ferdinand which was entered in 1984. However, the wife of Marcel Mutakyawa clearly testified on how the appellant's father purchased the land in dispute in 1984. He further argued that, the tribunal chairman failed to properly assess the evidence adduced before reaching the decision. Based on this ground, the counsel invited this Court to evaluate the evidence.

When submitting on the 2nd and 3rd grounds, Mr. Erasto insisted further that, the trial chairman did not evaluate the evidence at hand. He also assailed the judgment of the tribunal for not containing the findings of the tribunal.

In response, the counsel for the respondent argued that, the counsel for the appellant is the one who proposed the issues before the District Land and Housing Tribunal. On the point of assessors, the counsel for the respondent argued that, the hearing of the case commenced in the presence of two assessors but their tenure expired before the tribunal made its decision. On the first ground, the counsel submitted that, the trial chairman was right in dismissing the appellant's claim for failure to tender the purported sale agreement. On his part, the respondent proved that the land was given to him by his grandfather in 1984. He insisted that there was no transfer of the land from Damian Ferdinand to the appellant's father (Marcel Mutakyawa Kanyambo). He finally argued that the appellant's evidence was weak as compared to that of the respondent.

While rejoining the counsel for the appellant did not raise any significant argument rather than reiterating his submission-in-chief.

Upon considering the grounds of appeal and submissions from the parties, there are two issues that I need to address as far as this appeal is concerned. **First**, in the case at hand, the appellant's evidence shows that, the land in dispute belonged to her father called Marcel Mutakyawa Kanyambo. She further testified that her father bought the land in 1984 from Ferdinand. The evidence of PW1 who was the daughter of the late Marcel Mutakyawa Munyambo was supported with PW2 who was the wife of the late Marcel Mutakyawa Munyambo. She further confirmed that, the land in dispute belonged to her husband who died in 2010. PW2 married the deceased in 1972 and she therefore witnessed the purchase of the land in dispute.

On his side, the respondent testified that, the land in dispute belonged to his grandfather and it was given to him in 1984 and that the dispute arose in 2013 when he wanted to sell the land in dispute. His testimony was supported with the evidence of DW2, DW3 and DW4. In deciding this case, the trial chairman only banked on the appellant's failure to tender the sale agreement between Marcel Mutakyawa Munyambo and Damian Ferdinand. In my view, the trial chairman was supposed to evaluate the evidence at hand and test the same on the balance of probability before reaching the conclusion. The good evidence available in the proceedings was not evaluated. Failure to tender a sale agreement signed in 1984 alone cannot take away the fact that he appellant's

father might have purchased the same land in 1984. In this case, the sale agreement was not the only evidence to make a judicious decision. The same sale agreement might have been lost but that does not affect the fact that the land was actually purchased in 1984. What is evident in this case was failure by the trial chairman to assess the evidence at hand. Several court decisions have insisted on the evaluation of evidence before making the decision. For instance, in the case of **Leonard Mwanashoka v. R, Criminal Appeal No. 226 of 2014** (unreported) the court stated that:

'It is one thing to summarize the evidence for both sides separately and another thing to subject the entire evidence to an objective evaluation in order to separate the chaff from the grain. It is one thing to consider evidence and then disregard it after a proper scrutiny or evaluation and another thing not to consider the evidence at all in the evaluation or analysis.'

It was therefore wrong for the trial tribunal to disregard the entire evidence adduced and confine its decision on the document which was not tendered in court.

Second, as argued by the counsel for the appellant, the case commenced hearing on 13/11/2017 in the presence of two assessors namely, Muyaga and Bwahama. On 04th February 2019, another set of assessors came-in namely, Muyaga and Mpanju. The case was scheduled for hearing on the next date(s).

On 09th April 2020, the case proceeded for hearing of the appellant's case and there were no assessors. However, the record does not show when the assessors were dropped or when their tenure expired. I find this to be an anomaly which vitiated the proceedings of the trial tribunal. A similar stance was taken in the case of **Y.S. Chawalla & Co. LTD v. Dr. Abbas Teherali, Civil Appeal No. 70 of 2017**, CAT at Tanga, the Court of Appeal observed that:

'As we have vividly demonstrated, in the proceedings under our consideration, there was an unwarranted replacement of assessors on several occasions. The replacement offended the clear provision of the law which we have extracted and will alone, suffice to vitiate the trial proceedings of the tribunal.'

Assessors constitute the coram of the tribunal; their absence must be properly accounted for. It is vital to state the reasons for the absence of assessors to avoid the misuse and the possibility of a tribunal chairman to side-line assessors just for his/her own reasons. The presence of assessors is the requirement of the law which the chairman has no discretion to avoid without assigning reasons. See, **section 23 of the Land Disputes Courts Act, Cap. 216 RE 2019**.

Based on the reasons stated above, I hereby allow the appeal and quash the proceedings of the trial tribunal and decision thereof. The matter should remain

open for any interested party to institute a fresh suit before a competent forum.

No order as to costs. It is so ordered.





Ntemi N. Kilekamajenga
JUDGE
27th May 2022

Court:

Judgment delivered this 27th May 2022 in the presence of the respondent present in person. The appellant was absent but represented by the learned advocate, Mr. Geoffrey Rugimukamu (Adv). Right of appeal explained to the parties.




Ntemi N. Kilekamajenga
JUDGE
27th May 2022

